

Lord Mayor’s Charitable Foundation
Affordable Housing Challenge

NOTE: THIS OUTLINE IS PROVIDED FOR INFORMATION ONLY TO GIVE A GUIDE TO THE TYPE OF CLAUSES LIKELY TO BE INCLUDED IN A JOINT VENTURE AGREEMENT RELATING TO THE AFFORDABLE HOUSING CHALLENGE. THIS IS NOT INTENDED TO BIND THE PARTIES TO A SPECIFIC FORM OF AGREEMENT.

Narrative Outline

LMCF Affordable Housing Challenge

Joint Venture Agreement

DATE:

Between Developer Parties:

_____, a Community Housing Organisation, and

_____, a Commercial Developer

Background

1. The Lord Mayor’s Charitable Foundation’s (LMCF) Affordable Housing Challenge is a major grant opportunity aimed at demonstrating scalable and replicable solutions to providing affordable rental housing through a collaboration between a community housing organisation or not for profit organisation (CHOs) and a commercial developer(s), with financial support from philanthropy and government;
2. The LMCF Affordable Housing Challenge seeks to build knowledge and capability for more affordable rental housing development within Greater Melbourne and to incubate further collaboration between the not for profit sector, the private sector, local and State government;
3. LMCF will provide a \$1 million grant and a \$2 million impact investment through Social Enterprise Finance Australia (SEFA) to provide financial support for the Affordable Housing Challenge;
4. Developer #1 and Developer #2 desire to apply for the LMCF Affordable Housing Challenge grant and SEFA impact investment to form a joint venture to construct and operate a rental housing development of around 50 units (the “Project”) which will remain permanently affordable to a range of very low, low and moderate-income using donated land from a Local Government Agency

(LGA) (or other approved entity such as a university or hospital), and LMCF and SEFA financial support;

5. Developer #1 is a community housing organisation or not for profit organisation that desires to operate the affordable rental housing development for the long term;
6. Developer #2 is a developer with substantial experience in the entitlement, permitting, financing and construction of housing suitable for the Project;
7. Developer #1 and Developer #2 desire to enter into a joint venture for the purposes of financing, constructing and operating the Project through the use of LMCF grant and SEFA investment funds; and
8. Developer #1 and Developer #2 agree to enter into this Agreement to set out their understanding regarding the joint venture and the development of the Project, and the respective roles, responsibilities and compensation of the Parties.

The Parties agree as follows:

AGREEMENT (OUTLINE OF KEY POINTS)

1. Joint Venture Structure

Limited partner/company structure/other and ownership percentages.

2. Financial Participation

Financial returns/shares to each Party, such as

- Development fee (cash and/or deferred payment)
- Operating distributions (net cash flow)
- Sale proceeds
- Asset management fees
- Predevelopment expenses

3. Project Management

Set out the membership structure of the management committee, the terms of reference for the committee, how decisions are made, the minimum meetings and reporting obligations.

4. Site/Parcel Ownership

Ownership of the site, which will be transferred to the Development Entity from a Local Government Agency (LGA) or other landowner entity.

5. Guarantees

It is anticipated that the following financial guarantees will be required, and must be clearly assigned to the appropriate respective Party:

- Construction loan completion guarantee (Letter of Credit, Payment and Performance Bond as security)
- Operating deficit guarantee
- Equity guarantee if appropriate

6. Predevelopment Expenses

Responsibility for the payment of predevelopment expenses and potential reimbursement must be assigned to each appropriate respective Party. These will be enumerated and budgeted in the JV Agreement. These may include but will not be limited to:

- Architecture and engineering services;
- Legal services;
- Financial advisory services;
- Development, entitlement and permit fees;
- Environmental, market, appraisal and other third-party studies;
- Community outreach services; and
- Others as required for the Project.

7. Timing and Termination

This Agreement shall remain in place until completion of the Project. [Any exit options (e.g. during construction, completion of construction or at a later date (e.g. after 3 to 5 years of successful operation of the Project) to be specified and should be consistent with the development and management experience of Developer #1].

8. Roles and Responsibilities

In its capacity as managing partner of the Development Entity, Developer (#1 or #2) shall be responsible for the management and control of the affairs of the Development Entity, including the following:

- Managing the planning, entitlement, development, construction and lease up of the Project;
- Securing all Project financing required to close construction financing sources, convert to permanent financing, and sustainably operate the project under assumptions acceptable to the Parties;
- Developing the construction and development and property management budget for the Project;
- Delegating duties to, and selecting and employing from time to time, at the Development Entity's expense, any persons necessary or advisable for the development Project, including, but not limited to, the project architect, project engineer(s), project financial advisor, general contractor, property management company, project legal advisor, project accountants, market analyst, and other subconsultants, on terms and for compensation as are reasonably customary for similar services;

- Managing and using commercially reasonable efforts to secure any permits, certificates or approvals required for construction of the Project, including, but not limited to, building permits;
- Providing construction management;
- Performing such tasks as the Parties determine are necessary or convenient in connection with maintaining and enhancing community support for the Project;
- Financially structuring the development, and identifying, securing and negotiating the terms of all debt, subsidy and/or equity financing needed for the Project, including a construction loan and a permanent loan;
- Acting as tax matters partner, if and as needed under Australian law, for the joint venture;
- Performing or contracting the asset management of the Project;

Related parties [may/may not] serve as the general contractor and/or property manager of the Project.

Joint Developer Party Approval Rights: Subject to the qualifications set forth in this Section, the Development Entity shall not undertake any of the following without the approval of each Party, which approval shall not be unreasonably withheld and which, in all instances, shall be deemed given if disapproval thereof is not received in writing within [fifteen (15)] working days of transmittal of request therefore to each Party:

- development budget and financing plan;
- construction contract;
- construction and permanent loan documents;
- equity investment agreements, if any;
- initial and annual operating budget for the Project, including capitalized replacement, debt service and operating reserves and annual funding of such reserves from Project cash flow;
- marketing and lease-up plan; and
- tenant lease.

9. Long-Term Ownership

_____ [e.g., LGA; one of the Parties; or other third party], will have a first right of refusal to purchase the Project at a specified purchase formula that protects permanent affordability and specified income levels.

10. Limitations on Transfers

The Parties hereby agree that neither Party shall assign, sell or otherwise transfer its interest in the Project, the Development Entity, this Agreement, or in the assets, profits, losses or other economic interests to be realised as a result of this Agreement or participation in the Development Entity without the written consent of the other and of the LGA; provided, that each Party may assign its interest to a wholly-owned affiliate of that Party without obtaining the consent of the other Party or the LGA.

11. Additional Documents and Acts

Each Party agrees to execute and deliver such additional documents and/or perform such acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement.

12. Dispute resolution

Outline of the alternative dispute resolution process (e.g. escalation to senior management or expert determination) that will be followed in the event of a dispute prior to legal action being instituted.

13. Amendment

This Agreement may be amended only by the written consent of both Parties.

14. Default and Cure

Failure by either party to negotiate in good faith or to perform any other of its duties as provided in this Agreement shall constitute an event of default hereunder. The non-defaulting party shall give written notice of default to the defaulting party, specifying the nature of the default and the action required to cure the default. If the default remains uncured fifteen (15) days after service of such notice, the non-defaulting party may terminate this Agreement.

15. Severability

In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

16. Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which together shall constitute one contract binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

17. Legal Fees

In the event of any controversy or litigation between Developer #1 and Developer #2 relating to any provision of this Agreement, then the prevailing party in any such litigation shall, in addition to any other award made by the court in such litigation, be entitled to recover all of its costs incurred in connection therewith, including attorneys' fees and those fees incurred upon any appeal.

Exhibits:

Exhibit A: Legal description of Project Site

Exhibit B: Development Program and Affordability Requirements [to be added based on actual selected project proposal]